

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THE FORM.)

I. (a) PLAINTIFFS

Philadelphia Energy Solutions Refining & Marketing, LLC and PES Liquidating Trust
1735 Market St., Phila. PA 19103

(b) County of Residence of First Listed Plaintiff _____

(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

The Babcock & Wilcox Co., Babcock & Wilcox Co., Babcock & Wilcox Holdings, LLC, Babcock & Wilcox Enterprises, Inc.
1200 East Market Street, Suite 650, Akron, OH 44305

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Robert G. Devine, Esquire/ White and Williams LLP
1650 Market St., Suite 1800, One Liberty Place
Phila., PA 19103 856-317-3647

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|---|---|
| <input type="checkbox"/> 1. U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question
(U.S. Government Not a Party) |
| <input type="checkbox"/> 2. U.S. Government Defendant | <input type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business In This State	PTF	DEF
<input type="checkbox"/>	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input type="checkbox"/>	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/> 5	<input type="checkbox"/> 5

Citizen of Another State 3 Citizen or Subject of a Foreign Country 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions](#).

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> Personal Injury	<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> Product Liability	<input type="checkbox"/> 450 Commerce	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 485 Telephone Consumer Production Act	<input type="checkbox"/>
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/>
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 850 Securities/Commodities/ Exchange	<input type="checkbox"/>
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 860 Defend Trade Secrets Act of 2016	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> Product Liability	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 893 Environmental Matters
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> Other:	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 896 Arbitration
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
		<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 950 Constitutionality of State Statutes
		<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
IMMIGRATION	FEDERAL TAX SUITS			
<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)			
<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609			

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | | |
|--|--|--|---|--|--|---|
| <input type="checkbox"/> 1 Original Proceeding | <input checked="" type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|--|--|--|---|--|--|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdiction statutes unless diversity):
28 U.S.C. §§ 1441 and 1452

Brief description of cause:

Product liability suit barred by prior bankruptcy discharge of defendants.

VI. CAUSE OF ACTION

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

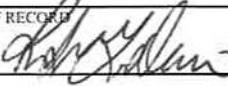
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VII. REQUESTED IN COMPLAINT:

JUDGE _____ DOCKET NUMBER _____

VIII. RELATED CASE(S) IF ANY

(See instructions):

DATE 3/22/2021 SIGNATURE OF ATTORNEY OF RECORD Robert G. Devine 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

PHILADELPHIA ENERGY SOLUTIONS	:	CIVIL ACTION
REFINING & MARKETING, LLC and PES	:	
LIQUIDATING TRUST	:	
v.	:	
THE BABCOCK & WILCOX COMPANY,	:	
BABCOCK & WILCOX COMPANY,	:	NO.
BABCOCK & WILCOX HOLDINGS, LLC,		
BABCOCK & WILCOX ENTERPRISES,		
INC.		

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

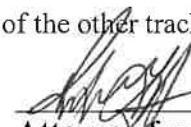
- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (X)
- (f) Standard Management -- Cases that do not fall into any one of the other tracks. ()

3/22/2021

Date

Robert G. Devine

Attorney-at-law



**Attorney for Defendants The
Babcock & Wilcox Company, et
al.
deviner@whiteandwilliams.com
E-mail Address**

215-864-7000

Telephone

215-864-7123

Fax Number

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 1735 Market Street, Philadelphia, PA 19103

Address of Defendant: 1200 East Market Street, Suite 650, Akron, OH 44305

Place of Accident, Incident or Transaction: Bankruptcy Discharge Order entered by E.D. La. District Court in E.D. La. Bankruptcy Court matter

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|------------------------------|-----------------------------|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

I certify that, to my knowledge, the within case is / is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: _____

Must sign here

Attorney-at-Law / Pro Se Plaintiff

Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)**A. Federal Question Cases:**

- 1. Indemnity Contract, Marine Contract, and All Other Contracts
- 2. FELA
- 3. Jones Act-Personal Injury
- 4. Antitrust
- 5. Patent
- 6. Labor-Management Relations
- 7. Civil Rights
- 8. Habeas Corpus
- 9. Securities Act(s) Cases
- 10. Social Security Review Cases
- 11. All other Federal Question Cases
(Please specify): Bankruptcy discharge of defendants

B. Diversity Jurisdiction Cases:

- 1. Insurance Contract and Other Contracts
- 2. Airplane Personal Injury
- 3. Assault, Defamation
- 4. Marine Personal Injury
- 5. Motor Vehicle Personal Injury
- 6. Other Personal Injury (*Please specify*): _____
- 7. Products Liability
- 8. Products Liability – Asbestos
- 9. All other Diversity Cases
(Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Robert G. Devine, counsel of record or pro se plaintiff, do hereby certify:

- Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- Relief other than monetary damages is sought.

DATE: 3/22/2021


 Robert G. Devine
 Attorney-at-Law / Pro Se Plaintiff

46384

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PHILADELPHIA ENERGY SOLUTIONS
REFINING & MARKETING, LLC,
1735 MARKET STREET
PHILADELPHIA, PA 19103

and

PES LIQUIDATING TRUST,
1735 MARKET STREET
PHILADELPHIA, PA 19103
Plaintiffs,

v.

THE BABCOCK & WILCOX COMPANY
1200 EAST MARKET STREET, SUITE 650,
AKRON, OH 44305

BABCOCK & WILCOX COMPANY
1200 EAST MARKET STREET, SUITE 650,
AKRON, OH 44305

BABCOCK & WILCOX HOLDINGS, LLC.
1200 EAST MARKET STREET, SUITE 650,
AKRON, OH 44305

BABCOCK & WILCOX ENTERPRISES,
INC.
1200 EAST MARKET STREET, SUITE 650,
AKRON, OH 44305

Defendants.

Civil Action No.

Removed from Court of Common Pleas of
Philadelphia, Civil Division

Case ID: 210202578

**NOTICE OF REMOVAL BY DEFENDANTS THE BABCOCK & WILCOX
COMPANY, DESIGNATED CORRECTLY AS THE BABCOCK & WILCOX
COMPANY AS WELL AS INCORRECTLY DESIGNATED AS BABCOCK &
WILCOX COMPANY, BABCOCK & WILCOX HOLDINGS, LLC AND BABCOCK &
WILCOX ENTERPRISES, INC.**

PLEASE TAKE NOTICE, that Defendants THE BABCOCK & WILCOX COMPANY, designated correctly as THE BABCOCK & WILCOX COMPANY as well as incorrectly designated as BABCOCK & WILCOX COMPANY, BABCOCK & WILCOX HOLDINGS, LLC and BABCOCK & WILCOX ENTERPRISES, INC. (collectively, “Babcock & Wilcox”), by and through their undersigned counsel, White and Williams LLP, hereby remove this action from the Court of Common Pleas, Philadelphia County, Commonwealth of Pennsylvania (the “Court of Common Pleas”), to the United States District Court for the Eastern District of Pennsylvania (the “District Court”), pursuant to 28 U.S.C. §§ 1441, 1446, and 1452 and Federal Rule of Bankruptcy Procedure 9027(a). In support of this Notice of Removal, Babcock & Wilcox states the following:

1. On February 26, 2021, Plaintiffs Philadelphia Energy Solutions Refining and Marketing LLC and PES Liquidating Trust (“Plaintiffs”) filed a complaint in the Court of Common Pleas, asserting claims of negligence, strict liability, and breach of implied warranties (“State Court Action”). See State Court Action Complaint attached hereto as Exhibit A.
2. On February 22, 2000, The Babcock & Wilcox Company and certain affiliates (“Debtors”) filed voluntary petitions under Chapter 11 of the United States Code in the United States Bankruptcy Court for the Eastern District of Louisiana (the “Bankruptcy Court”), *In re The Babcock & Wilcox Company, et al.*, Docket No. 00-10992 (the “Bankruptcy Action”).
3. The discharge injunction in Debtors’ *Joint Plan of Reorganization as of September 28, 2005, as Amended Through January 17, 2006* (the “Plan”) provides in pertinent part:

Except as otherwise provided in this Plan, the rights afforded in this Plan and the treatment of all Claims and Equity Interests herein shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Equity Interests of any nature whatsoever, including any interest accrued thereon from and after the Petition Date, against the Debtors and the Debtors in Possession, or their assets, properties, or interests in property. Except as otherwise provided herein, on the Effective Date, all Claims against and Equity

Interests in the Debtors and the Debtors in Possession (**including any based on acts or omissions that constituted or may have constituted ordinary or gross negligence or reckless, willful, or wanton misconduct of any of the Debtors, or any conduct for which any of the Debtors may be deemed to have strict liability under any applicable law**) shall be satisfied, discharged, and released in full. The Reorganized Debtors shall not be responsible for any obligations of the Debtors or the Debtors in Possession except ... those expressly assumed by the Reorganized Debtors pursuant to this Plan All Entities shall be precluded and forever barred from asserting against the Debtors, the Reorganized Debtors, ..., or their assets, properties, or interests in property any other or further Claims or Demands based upon any act or omission, transaction, or other activity, event, or occurrence of any kind or nature that occurred prior to the Effective Date, whether or not the facts of or legal bases therefor were known or existed prior to the Effective Date, except as expressly provided in this Plan.

See Plan, attached hereto as Exhibit B, at § 11.2 (emphasis in original).¹

4. Article 9 of the Plan further provides that:

[T]he [Bankruptcy] Court shall retain and shall have exclusive jurisdiction to the fullest extent provided by applicable law over any matter (a) arising under the Bankruptcy Code, (b) arising in or related to the Chapter 11 Cases or this Plan, or (c) that relates to the following: . . .

9.5.10 To enter such orders as are necessary to implement and enforce the injunctions described herein....

5. On January 18, 2006, the Bankruptcy Court entered an order confirming the Plan (the “Confirmation Order”), which became effective on February 22, 2006. The Confirmation Order provides that:

Notwithstanding any closing of the Chapter 11 cases, [Debtors] may move ... to reopen the Chapter 11 cases for the purpose of seeking relief pursuant to the retained jurisdiction of the Bankruptcy Court provided herein, in the [Plan], or under applicable law.

See Confirmation Order, attached hereto as Exhibit C, at ¶ 64.

¹ The Plan’s exhibits are voluminous and not relevant to this Notice of Removal, and thus have not been attached.

6. On June 20, 2009, the Bankruptcy Court entered a “Final Decree Order,” which closed the bankruptcy case “without prejudice to the rights of The Babcock & Wilcox Company to seek to reopen its chapter 11 case for cause[.]” *See* Final Decree Order attached hereto as Exhibit D.

7. The Bankruptcy Court further ordered that it would “retain[] jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.”

8. Babcock & Wilcox files this Notice for Removal because the State Court Action directly arises from the Bankruptcy Action insofar as it violates the discharge injunction contained in the confirmed Plan and thus implicates the Bankruptcy Court’s retained jurisdiction.

9. Babcock & Wilcox was served with the Complaint on March 2, 2021. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C § 1446(b)(1).

The Basis for Removal

10. Babcock & Wilcox seeks removal of the State Court Action pursuant to 28 U.S.C §§ 1441 and 1452.

11. Section 1452 of the United States Code provides, “[a] party may remove any claims or causes of action … to the district court where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.” 28 U.S.C. § 1452(a); *see also* Fed. R. Bankr. P. 9027 (governing removal in bankruptcy matters).

12. Section 1334 provides, “the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.” 28 U.S.C. § 1334(b). Thus, the District Court and the Bankruptcy Court have original jurisdiction over the State Court Action.

13. Specifically, the Complaint alleges an explosion occurred on or about June 21, 2019 at an oil refinery complex owned and operated by Plaintiff, Philadelphia Energy Solutions Refining and Marketing LLC, resulting in damage. *See Compl.* at ¶¶ 14-19.

14. The Complaint further alleges the explosion was caused by “a hydrocarbon vapor release” emanating from an elbow joint that was “designed, manufactured, marketed, distributed or sold by [Babcock & Wilcox.]” *See Compl.* at ¶¶ 15, 17, 20-21.

15. Further, the Complaint alleges the elbow joint at issue was purchased during the construction of the refinery where the elbow joint was installed and the subsequent explosion occurred. *See Compl.* at ¶ 16.

16. On information and belief, the construction, and thus, sale of the elbow joint occurred in the 1970s, roughly three decades before the Bankruptcy Action began.

17. When, as here, an action implicates the discharge injunction in a confirmed plan of reorganization, it falls squarely within the confines of the Bankruptcy court’s continuing jurisdiction. Indeed, the Third Circuit has held:

[T]he jurisdiction of the non-Article III bankruptcy courts is limited after confirmation of a plan. But where there is a close nexus to the bankruptcy plan or proceeding, as when a matter affects the interpretation, implementation, consummation, execution, or administration of a confirmed plan ..., retention of post-confirmation bankruptcy court jurisdiction is normally appropriate.

Binder v. Price Waterhouse & Co., LLP (In re Resorts Int'l, Inc.), 372 F.3d 154, 168-69 (3d Cir. 2004). Other courts have similarly held that a debtor may remove a case, pursuant to 28 U.S.C. § 1452, based on the need to determine whether a particular debt has been discharged. *See, e.g., Rhodes Life Ins. Co. v. Mandy Props., L.C.*, 2009 U.S. Dist. LEXIS 41691, *9-10 (E.D. La. Apr. 30, 2009)(citing *Insurance Co. of N. Am. v. NGC Settlement Trust (In re National Gypsum Co.)*, 118 F.3d 1056, 1063-64 (5th Cir. 1997)).

18. Therefore, this State Court Action arises from the Bankruptcy Action and may be removed to federal court.

Reservation of Rights

19. This Notice of Removal is without prejudice to any and all other rights and remedies that Babcock & Wilcox may have with respect to enforcement of the Plan, including the discharge injunction contained therein, all of which rights and remedies are expressly reserved, including without limitation the right to seek to reopen the Bankruptcy Action for the purpose of enforcing the Plan and its discharge injunction and to seek damages for violation of the discharge injunction.

Conclusion

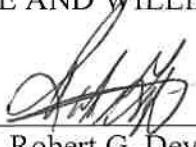
20. The State Court Action, which directly arises from the Bankruptcy Action insofar as it violates the discharge injunction contained in the confirmed Plan and thus implicates the Bankruptcy Court's retained jurisdiction, is properly removed to federal court.

21. Pursuant to 28 U.S.C. § 1446(d), written notice of this Notice of Removal will promptly be given to all parties.

WHEREFORE, having shown that this case is properly removable, Babcock & Wilcox provides notice pursuant to 28 U.S.C. § 1446 that the Action pending in the Court of Common Pleas, Philadelphia County, Commonwealth of Pennsylvania, Case No. 210202578, is removed to the United States District Court for the Eastern District of Pennsylvania.

Respectfully submitted,

WHITE AND WILLIAMS LLP

BY 

Robert G. Devine, Esquire
Victor J. Zarrilli, Esquire
1650 Market Street, Suite 1800
One Liberty Place
Philadelphia, PA 19103-7395
Phone – 215-864-7000
Fax – 215-864-7123
deviner@whiteandwilliams.com
zarrilliv@whiteandwilliams.com

Dated: March 22, 2021

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PHILADELPHIA ENERGY SOLUTIONS
REFINING & MARKETING, LLC,
1735 MARKET STREET
PHILADELPHIA, PA 19103

and

PES LIQUIDATING TRUST,
1735 MARKET STREET
PHILADELPHIA, PA 19103
Plaintiffs,

v.

THE BABCOCK & WILCOX COMPANY
1200 EAST MARKET STREET, SUITE 650,
AKRON, OH 44305

BABCOCK & WILCOX COMPANY
1200 EAST MARKET STREET, SUITE 650,
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BABCOCK & WILCOX HOLDINGS, LLC.
1200 EAST MARKET STREET, SUITE 650,
AKRON, OH 44305

BABCOCK & WILCOX ENTERPRISES,
INC.
1200 EAST MARKET STREET, SUITE 650,
AKRON, OH 44305

Defendants.

Civil Action No.

Removed from Court of Common Pleas of
Philadelphia, Civil Division

Case ID: 210202578

NOTICE TO PLAINTIFF

TO: James F. Marrion, Esquire
Kevin E. Raphael, Esquire
PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP
1818 Market Street, Suite 3402
Philadelphia, PA 19103

PLEASE take notice that Defendants, The Babcock & Wilcox Company, Babcock & Wilcox Company, Babcock & Wilcox Holdings, LLC, and Babcock & Wilcox Enterprises, Inc., have filed a Notice in the United States District Court for the Eastern District of Pennsylvania for removal of an action now pending in the Court of Common Pleas of Philadelphia County, Pennsylvania captioned Philadelphia Energy Solutions Refining & Marketing, LLC and PES Liquidating Trust v. The Babcock & Wilcox Company, Babcock & Wilcox Company, Babcock & Wilcox Holdings, LLC, and Babcock & Wilcox Enterprises, Inc., Case ID: 210202578.

FURTHER, take notice that Defendants, The Babcock & Wilcox Company, Babcock & Wilcox Company, Babcock & Wilcox Holdings, LLC, and Babcock & Wilcox Enterprises, Inc., have at the same time filed a copy of the Complaint, which was filed and entered in the Court of Common Pleas of Philadelphia County. A copy of said Notice of Removal is attached to this Notice and is hereby served upon you.

Respectfully submitted,

WHITE AND WILLIAMS LLP

BY



Robert G. Devine, Esquire
Victor J. Zarrilli, Esquire
1650 Market Street, Suite 1800
One Liberty Place
Philadelphia, PA 19103-7395
Phone – 215-864-7000
Fax – 215-864-7123
deviner@whiteandwilliams.com
zarrilliv@whiteandwilliams.com

Dated: March 22, 2021

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PHILADELPHIA ENERGY SOLUTIONS
REFINING & MARKETING, LLC,
1735 MARKET STREET
PHILADELPHIA, PA 19103

and

PES LIQUIDATING TRUST,
1735 MARKET STREET
PHILADELPHIA, PA 19103
Plaintiffs,

v.

THE BABCOCK & WILCOX COMPANY
1200 EAST MARKET STREET, SUITE 650,
AKRON, OH 44305

BABCOCK & WILCOX COMPANY
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1200 EAST MARKET STREET, SUITE 650,
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BABCOCK & WILCOX ENTERPRISES,
INC.
1200 EAST MARKET STREET, SUITE 650,
AKRON, OH 44305

Defendants.

Civil Action No.

Removed from Court of Common Pleas of
Philadelphia, Civil Division

Case ID: 210202578

PROOF OF FILING

TO THE CLERK OF THE COURT:

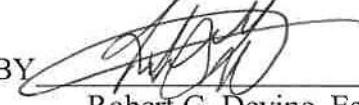
I, Robert G. Devine, Esquire, hereby certify that a copy of the foregoing Notice of Removal will be filed with the Prothonotary of the Philadelphia Court of Common Pleas

immediately upon receipt of the *certified* copy from the United States District Court for the Eastern District of Pennsylvania.

Respectfully submitted,

WHITE AND WILLIAMS LLP

BY


Robert G. Devine, Esquire
Victor J. Zarrilli, Esquire
1650 Market Street, Suite 1800
One Liberty Place
Philadelphia, PA 19103-7395
Phone – 215-864-7000
Fax – 215-864-7123
deviner@whiteandwilliams.com
zarrilliv@whiteandwilliams.com

Dated: March 22, 2021

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PHILADELPHIA ENERGY SOLUTIONS
REFINING & MARKETING, LLC,
1735 MARKET STREET
PHILADELPHIA, PA 19103

and

PES LIQUIDATING TRUST,
1735 MARKET STREET
PHILADELPHIA, PA 19103
Plaintiffs,

v.

THE BABCOCK & WILCOX COMPANY
1200 EAST MARKET STREET, SUITE 650,
AKRON, OH 44305

BABCOCK & WILCOX COMPANY
1200 EAST MARKET STREET, SUITE 650,
AKRON, OH 44305

BABCOCK & WILCOX HOLDINGS, LLC.
1200 EAST MARKET STREET, SUITE 650,
AKRON, OH 44305

BABCOCK & WILCOX ENTERPRISES,
INC.
1200 EAST MARKET STREET, SUITE 650,
AKRON, OH 44305

Defendants.

Civil Action No.

Removed from Court of Common Pleas of
Philadelphia, Civil Division

Case ID: 210202578

CERTIFICATE OF SERVICE

I, Robert G. Devine, Esquire, hereby certify that on March 22, 2021, I caused a true and correct copy of the foregoing **NOTICE OF REMOVAL; DISCLOSURE STATEMENT; CIVIL COVER SHEET; U.S. DISTRICT COURT DESIGNATION FORM; CASE MANAGEMENT**

TRACK DESIGNATION FORM; NOTICE TO PLAINTIFF; and PROOF OF MAILING to
be served upon the following persons by electronic mail:

James F. Marrion, Esquire
Kevin E. Raphael, Esquire
PIERTRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP
1818 Market Street, Suite 3402
Philadelphia, PA 19103

Respectfully submitted,

WHITE AND WILLIAMS LLP

BY 

Robert G. Devine, Esquire
Victor J. Zarrilli, Esquire
1650 Market Street, Suite 1800
One Liberty Place
Philadelphia, PA 19103-7395
Phone – 215-864-7000
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deviner@whiteandwilliams.com
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Dated: March 22, 2021

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Defendants.

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**PROOF OF FILING NOTICE OF REMOVAL WITH
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**

TO THE PROTHONOTARY:

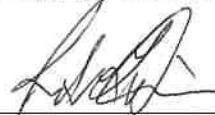
Pursuant to the Pennsylvania Rules of Civil Procedure and the Federal Rules of Civil
Procedure, enclosed please find for filing a *certified* copy of Defendants' Notice of Removal of

this matter to the United States District Court for the Eastern District of Pennsylvania, the original of which was filed on March 22, 2021.

Respectfully submitted,

WHITE AND WILLIAMS LLP

BY



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Dated: March 22, 2021